



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHEAST REGIONAL COUNSEL

June 7, 2010

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Bala-Cynwyd, PA 19004

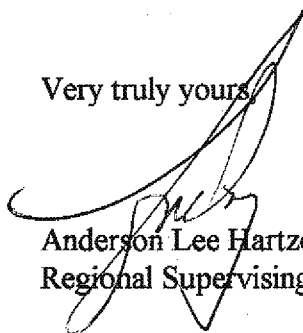
Re: Bishop Tube Second Amendment

Dear Jonathan,

Enclosed please find a fully executed Second Amendment to Consent Order and Agreement for the Bishop Tube matter. Please note that this was signed on June 4, 2010 for purposes of the various deadlines.

Thank you for your attention to this matter.

Very truly yours,




Anderson Lee Hartzell  
Regional Supervising Counsel

cc: Steve Sinding  
Ragesh Patel  
Dustin Armstrong

Office of Chief Counsel | 2 East Main Street | Norristown, PA 19401-4915

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Bishop Tube Site	:	Second Amendment to
East Whiteland Township	:	Prospective Purchase Agreement
Chester County, Pennsylvania	:	
Constitution Drive Partners, L.P.	:	
2701 Renaissance Boulevard, 4 <sup>th</sup> Floor	:	
King of Prussia, PA 19406	:	

**SECOND AMENDMENT TO  
CONSENT ORDER AND AGREEMENT**

This Second Amendment to Consent Order and Agreement ("Second Amendment") is entered into this 4<sup>th</sup> day of June 2010, 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Constitution Drive Partners, L.P. ("Developer," and Developer and the Department shall collectively be referred to herein as the "Parties").

WHEREAS, Developer and the Department entered into a Consent Order and Agreement dated March 17, 2005, (the "CO&A") relating to the former Bishop Tube HSCA site located approximately a quarter of a mile south of U.S. Route 30, East Whiteland Township, Chester County, Pennsylvania, and consisting of land approximately 13.7 acres in size, and identified as Chester County Tax Parcel Number UPI 42-04-0321.020 (the "Site");

WHEREAS, Developer and the Department entered into a First Amendment to Consent Order and Agreement dated January 22, 2007, (the "First Amendment")

amending the CO&A;

WHEREAS, under the CO&A and First Amendment, in exchange for, inter alia, the Developer's covenants and commitment to remediate unsaturated soils at the Site in order to demonstrate attainment with one or a combination of remediation standards for soils under the Pennsylvania Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 to 6026.908 ("Act 2"), the Department provided Developer with a covenant not to sue pursuant to Section 7 of the CO&A, and contribution protection pursuant to Section 9 of the CO&A;

WHEREAS, Developer and the Department agreed pursuant to the First Amendment that the Developer would satisfy all of its remaining remedial obligations under the CO&A by: (1) purchasing and installing certain portions of a soil vapor extraction/air sparging remedial system (the "AS/SVE System"); and, (2) operating the AS/SVE System until certain criteria were met;

WHEREAS, Developer has installed and commenced operation of the AS/SVE System and has made significant progress towards meeting the system operational criteria established in the First Amendment, and Developer and the Department believe that future operation of the AS/SVE System will assist in the remediation of hazardous substances in soil and groundwater at the Site;

WHEREAS, Developer and the Department desire to further amend the CO&A to allow the Department to assume operational control of the AS/SVE System;

NOW, THEREFORE, upon the mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department pursuant to Section 1102 of HSCA and AGREED TO by Developer as

follows:

1. Paragraph 3 of the CO&A shall be amended and restated as follows:

**“(a) WORK TO BE PERFORMED/MONETARY**

**COMPENSATION:** In exchange for the benefits conferred by the Department to Developer under this CO&A, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer shall undertake the following:

- (1) AS/SVE System Repair. Developer shall make any necessary repairs, including but not limited to the repair or replacement of any manifold equipment that is broken, damaged or otherwise not functioning, to the AS/SVE System such that the AS/SVE System is fully operational for a seventy-two (72) hour period (the “AS/SVE System Repairs”). Developer shall complete the AS/SVE System Repairs within sixty (60) days of execution of this Second Amendment..

- (2) AS/SVE System Startup. After completion by the Developer of the AS/SVE System Repairs, Developer shall commence, and be solely responsible for the start up of, the AS/SVE System, which start up period shall be satisfied once Developer has demonstrated to the reasonable satisfaction of the Department that the AS/SVE

System has operated continuously without incident for a seventy-two (72) hour period ("AS/SVE System Startup").

(3) AS/SVE System Manuals and Drawings.

Within thirty (30) days of execution of this Second Amendment, Developer shall provide the Department with a copy of all operational manuals and as-built drawings, stamped by a Licensed Professional Engineer, for the AS/SVE System in the possession of Developer or its consultants.

(4) Monetary Compensation. Developer shall

make the following monetary payments to the Department:

(a) Developer shall pay the Department \$10,000 within thirty (30) days of execution of this Second Amendment; and (b) Developer shall pay the Department an additional \$20,000 within one (1) year of the date of execution of this Second Amendment. Both payments shall be made payable to the Hazardous Sites Cleanup Fund , and mailed to Mr. Ragesh Patel, HSCA Manager, PA Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401

(5) Road Repair. Within 60 days of the date of

execution of this Second Amendment, Developer shall repair the road along the north side of the main building

(the "Building") at the Site, as depicted on Exhibit B attached hereto, and incorporated herein by reference, so that it is passable for standard passenger vehicles and so that stormwater discharged from roof drains to the road as depicted on Exhibit B are directed away from the AS/SVE System.

(6) Security. Developer shall, within sixty (60) days of the date of this Second Amendment, install fencing with a minimum height of seven (7) feet, around all manifold enclosures. The fencing shall include an enclosure over the manifold, in addition to the vertical fencing.

(b) Upon satisfaction of Developer's obligations pursuant to Paragraph 3(a) above, the Department shall provide Developer with a letter within fourteen (14) days of satisfaction of Developer's obligations confirming that Developer has satisfied its obligations pursuant to Paragraph 3(a), and Developer shall have no further remedial obligations at all to the Department relating to the Site pursuant to the CO&A and First Amendment (including, but not limited to any obligation to remediate soil, groundwater, or surface water at or beyond the Site, or

for the operation and maintenance of the AS/SVE System at the Site).

(c) If the Department deems it necessary to implement Engineering or Institutional Controls as part of Remedial Action for the Site, Developer shall only be financially responsible for implementing the following Engineering Controls: (1) Site capping in the Drum Storage Area through a combination of asphalt paving, building foundations and/or landscaping; and/or (2) other Engineering Controls determined to be necessary to address vapor intrusion risks for on-site structures.

2. The Developer's address under Paragraph 12 of the CO&A shall be amended and restated as follows:

"Constitution Drive Partners, L.P.  
2701 Renaissance Boulevard, 4<sup>th</sup> Floor  
King of Prussia, PA 19406  
Attention: Richard Heany, President, Constitution Drive Acquisition Corporation, General Partner of Constitution Drive Partners, L.P."

3. This Second Amendment shall modify and is made a part of the CO&A. Otherwise, except as amended hereby, the CO&A shall remain unmodified and in full force and effect.

4. This Second Amendment may be executed in counterparts, each of which

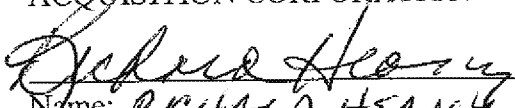
counterparts shall constitute an original, but which counterparts together shall constitute the same Second Amendment. The delivery by any Party hereto of a telecopy or facsimile signature shall have the same legally binding effect as the delivery of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their duly authorized representatives. The undersigned representative of the Developer certifies under penalty of law, as provided by 18 Pa. C.S. Section 4904, that he is authorized to execute this Second Amendment on behalf of the Developer; that the Developer consents to the entry of this Second Amendment as a final Order of the Department; and that the Developer hereby knowingly waives any rights to appeal this Amendment and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. Sect. 7514; the Administrative Agency Law, 2 Pa. C.S. Sect. 103(a) and Chapters 5A and 7A thereof; or any other provision of law.

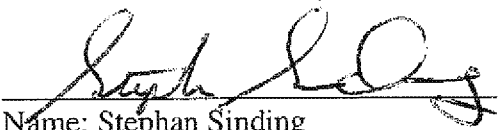
FOR THE DEVELOPER:

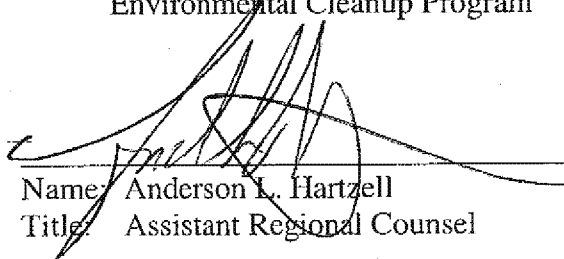
CONSTITUTION DRIVE PARTNERS,  
L.P.

By its General Partner  
CONSTITUTION DRIVE  
ACQUISITION CORPORATION

  
Name: RICHARD HEANEY  
Title: PRESIDENT

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

  
Name: Stephan Sinding  
Title: Environmental Program Manager  
Environmental Cleanup Program

  
Name: Anderson L. Hartzell  
Title: Assistant Regional Counsel

JURAT Page

COMMONWEALTH OF PENNSYLVANIA :  
:  
: SS.  
COUNTY OF (COUNTY) ::

On this 7<sup>th</sup> day of June, 2010, before me, a Notary Public, the undersigned officer personally appeared, Stephan Sinding, who acknowledged himself to be the Environmental Cleanup Program Manager for the Southeast Regional Office of the Pennsylvania Department of Environmental Protection, and that he as such Manager, being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing his name as Cleanup Program Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Vanetta Bouknight Ross, Notary Public  
Norristown Boro, Montgomery County  
My Commission Expires Dec. 1, 2013

Member, Pennsylvania Association of Notaries

Vanetta Bouknight Ross  
Notary Public

JURAT Page

COMMONWEALTH OF PENNSYLVANIA

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SS.

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COUNTY OF (COUNTY)

On this 4th day of June, 2010, before me, a Notary Public, the undersigned officer personally appeared, Richard Heany, who acknowledged himself to be the President (Title) of Constitution Drive Acquisition Corporation, a Pennsylvania corporation and General Partner of Constitution Drive Partners, L.P., and that (s)he as such (Title), being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing the name of the corporation by (him)(her)self as (Title).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

HARRY A. REICHNER, Notary Public

Whitpain Twp., Montgomery County

My Commission Expires November 13, 2010

Notary Public